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The Report of the Department of Justice Pursuant to Section 13(c) of Executive Order 14074



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**Officer Review of Body-Worn Camera Recordings After an Incident
Involving the Use of Force**

Executive Order 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety*, <https://www.federalregister.gov/d/2022-11810>, May 25, 2022.

Sec. 13. *Ensuring Appropriate Use of Body-Worn Cameras and Advanced Law Enforcement Technologies.* (c) Within 365 days of the date of this order, the Attorney General, in coordination with the Secretary of HHS and the Director of the Office of Science and Technology Policy (OSTP), shall conduct a study that assesses the advantages and disadvantages of officer review of BWC recordings prior to the completion of initial reports or interviews concerning an incident involving use of force, including an assessment of current scientific research regarding the effects of such review. Within 180 days of the completion of that study, the Attorney General, in coordination with the Secretary of HHS, shall publish a report detailing the findings of that study, and shall identify best practices regarding law enforcement officer review of BWC recordings.

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Chapter 1. Introduction

This report provides a comprehensive discussion about the timing of officer review of body-worn camera (BWC) recordings following a use of force. Executive Order 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety*, addresses a wide range of topics and issues affecting policing and the criminal justice system, including use of force and the role of technology. Section 13(c) of the Executive Order, *Ensuring Appropriate Use of Body-Worn Cameras and Advanced Law Enforcement Technologies*, directed the Attorney General, in coordination with the Secretary of Health and Human Services (HHS) and the Director of the Office of Science and Technology Policy (OSTP), to conduct a study that assesses the advantages and disadvantages of officer review of BWC recordings prior to the completion of initial reports or interviews concerning an incident involving use of force, including an assessment of current scientific research regarding the effects of such review.¹

The issue of when officers should review BWC recordings raises a complex policy question that intersects with police operations, administrative procedure, and criminal procedure. The central debate concerns whether officers should be permitted to review their own BWC recordings concerning a use of force prior to and/or after making an initial statement. Distinctions are often made between incidents that require low to moderate levels of force to subdue or take an individual into custody versus a “critical incident” that requires the use of incapacitating or lethal force or involves unique or extraordinary circumstances. It is common for law enforcement agencies to have different policies and procedures for more serious uses of force—and by extension, policies and procedures for viewing BWC recordings may vary depending on the type of force used in an encounter. This report is designed to provide law enforcement executives, union officials, policymakers, and elected officials at various levels of government with a comprehensive assessment of this issue, delineating the reasons for, benefits of, and unintended consequences associated with the array of policy options. Broadly, the policy options that law enforcement agencies will need to consider include whether:

1. Officers are never permitted to review BWC recordings;
2. Officers participate in a perceptual interview and/or submit an initial written report before viewing their own recordings, followed by an opportunity to view recordings and supplement the report (noting where additions/changes were made); or
3. Officers are always permitted to review BWC recordings and other video evidence before being interviewed or writing a report.

¹ Executive Order 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety*, <https://www.federalregister.gov/d/2022-11810>, May 25, 2022: “Sec. 13. *Ensuring Appropriate Use of Body-Worn Cameras and Advanced Law Enforcement Technologies*. (c) Within 365 days of the date of this order, the Attorney General, in coordination with the Secretary of HHS and the Director of the Office of Science and Technology Policy (OSTP), shall conduct a study that assesses the advantages and disadvantages of officer review of BWC footage prior to the completion of initial reports or interviews concerning an incident involving use of force, including an assessment of current scientific research regarding the effects of such review. Within 180 days of the completion of that study, the Attorney General, in coordination with the Secretary of HHS, shall publish a report detailing the findings of that study, and shall identify best practices regarding law enforcement officer review of BWC footage.”

Further, each of these options could apply to all use-of-force incidents, not just critical incidents or serious incidents.

The first option – a prohibition on officer review of BWC recordings – is the least prevalent of the three approaches. The second option is a compromise solution that requires an officer to write an initial report, which captures the officer’s perceptions of the use-of-force event (i.e., consistent with the *Graham v. Connor* standard). The officer is then permitted to review the BWC recordings and submit a supplemental or amended report—which is added to the initial statement. As discussed in this report, this approach is gaining adherence because it ensures that the officer’s memory is preserved in the initial statement and any discrepancies between the initial statement and contents of the video can be addressed in the supplemental or amended report. A 2023 survey of 156 agencies by the Police Executive Research Forum (PERF) of its member agencies in the U.S. found that the percentage of agencies that allow officers to view BWC recordings prior to making a statement after a critical incident fell from roughly 92% to 56% over the previous ten years (Police Executive Research Forum, 2023). Although shrinking, this approach is still used by the majority of agencies and does have advantages as described in the report.

The report is divided into several chapters following this Introduction. Chapter 2 frames the issue with a brief discussion of existing policies and details several arguments for and against allowing officers to review BWC recordings prior to making a statement after a use of force. Chapter 3 discusses what the available research tells us about the issue and closely related topics. Chapter 4 provides an analysis of the BWC policies of state and local agencies that participate in the Bureau of Justice Assistance’s BWC Policy and Implementation Program (BWCPPI) and highlights several state statutes and local police department labor negotiations concerning officer review of BWC recordings. Chapter 5 reports the results of three listening sessions with different stakeholder communities, including law enforcement leaders, researchers, legal scholars, and advocacy groups. The report concludes with Chapter 6, which presents some key takeaways.

Chapter 2. Framing the issue

The decision about whether to allow an officer to review BWC recordings following a use-of-force incident is a highly complex issue that draws on intricate dimensions of psychology, constitutional law, technology, and policy. The issue has gained traction over the last decade and has been discussed among a variety of stakeholder groups. In addition, a number of individual states have passed legislation that provides more explicit direction about pre-report versus post-report viewing.

The issue of officer post-incident review of BWC recordings emerged alongside the widespread deployment of BWCs, often accompanying other policy decisions around BWC use. In response, the PERF published a report, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (Miller, et al., 2017), in 2014 with funding from the U.S. Department of Justice, Office of Community Oriented Policing (COPS).

The findings described in the PERF report were based on a survey of 254 law enforcement agencies across the nation, follow-up interviews with selected police executives, and a conference held in September 2013 in Washington, D.C. at which police executives and other experts from across the country gathered to discuss the policy and operational issues surrounding body-worn cameras. The report focused broadly on BWC topics and offered 33 recommendations to assist law enforcement agencies as they develop body-worn camera policies and practices.

Recommendation 20 favored allowing officers to view BWC recordings before writing a report concerning a use of force (p. 45):

Officers should be permitted to review video footage of an incident in which they were involved, prior to making a statement about the incident. This can occur, for example, if an officer is involved in a shooting and has to give a statement about the shooting that may be used in an administrative review or a criminal or civil court proceeding.

This recommendation was based on the following core rationales (p. 45):

- *Reviewing footage will help officers remember the incident more clearly, which leads to more accurate documentation of events. The goal is to find the truth, which is facilitated by letting officers have all possible evidence of the event.*
- *Real-time recording of the event is considered best evidence. It often provides a more accurate record than an officer's recollection, which can be affected by stress and other factors. Research into eyewitness testimony demonstrates that stressful situations with many distractions are difficult even for trained observers to recall correctly.*
- *If a jury or administrative review body sees that the report says one thing and the video indicates another, this can create inconsistencies in the evidence that might damage a case or unfairly undermine the officer's credibility.*

PERF recently revisited this issue, ten years after its 2013 conference and 2014 report, and found a significant shift in agencies' policies toward this issue. For example, 156 agencies responding to a 2023 survey of PERF membership in the U.S. found that the percentage of agencies that allow officers to view BWC recordings prior to making a statement after a critical incident fell from roughly 92% to 56% over the previous ten years (Police Executive Research Forum, 2023: 25). PERF recently updated its policy recommendation to suggest that a "perceptual interview" is the best path forward for critical incidents (p. 29):

Officers involved in a critical incident should be interviewed before watching relevant BWC footage. During the "perceptual interview," they should describe their perceptions (what they saw, heard, felt, believed, experienced before arriving, etc.) before, during, and after an incident. After the perceptual interview, officers should be given the opportunity to provide a video-informed statement by reviewing BWC footage and offering clarifications that they feel are appropriate.

Conversely, and consistent with many other law enforcement associations, the Major Cities Chiefs Association (MCCA) released a recommendation in May 2024 that officers should be permitted to review BWC recordings before they are required to give a statement or write an official report (Major Cities Chiefs Association, 2024). Notably, MCCA surveyed its member agencies and found that among those that responded, 60% permit officers to review BWC recordings prior to making a statement after a critical incident (Major Cities Chiefs Association, 2024).

Reasonable arguments exist on both sides of the "watch first" versus "report first" debate. Arguments for allowing officers to watch their recordings first before making a formal statement are detailed above in the excerpts from PERF's 2014 report.

Arguments against officers viewing first include:

- Watching the recordings could undermine or alter the officer's memory of what occurred. The officer's memory before watching the recordings is a more genuine and unadulterated account of what they observed and how they perceived the incident.
- Watching the recordings could lead to bias in the reporting of the event.
- Watching the recordings may negatively affect the integrity of an investigation where the officer's description of their decision-making, thought process, and perceptions *at the time* of the incident is critical.
- Under *Graham v. Connor* (490 U.S. 386 (1989)), the reasonableness of the use of force should be assessed from the perspective of a reasonable officer on the scene, without the benefit of hindsight or any additional information. If review of BWC footage alters the officer's memory or perception of the incident, then the report may not be an accurate account of the officer's perception.
- Watching the recordings first introduces an opportunity for collusion or to alter what the officer would have otherwise reported to cover up misconduct.

Many of the arguments on both sides of the issue are articulated in White and Malm's (2020) book, entitled *Cops, Cameras, and Crisis*, in an exchange between Professor Seth Stoughton,

University of South Carolina School of Law, and Arif Alikhan, former Director of the Office of Constitutional Policing and Policy, Los Angeles Police Department (LAPD). Professor Stoughton states (White and Malm, 2020: 63), “Adopting a ‘pre-report review’ policy decreases the accuracy of reports, risks diluting the legal standard, and courts public controversy.” Director Alikhan (White and Malm, 2020: 67) notes however, “Allowing officers to review video footage captured by their body-worn cameras is consistent with [memory inducing] procedures in place for many decades, and the arguments to change the practice are not supported by reliable evidence.”² In their exchange, both experts refer to research on the issue, and this is a critically important point. The dialogue over officer review of recordings following a use of force should be informed by the available empirical evidence, discussed in the next chapter.

² Alikhan’s argument rests on the presumption that watching BWC recordings is essentially a memory inducing tool that is analogous to the tools and processes that are typically evoked to improve recall and accuracy in investigation of high-stress and complex events. Analogous tool/processes include (1) **Delayed debriefing**: Allowing time for emotional debriefing and stress reduction can aid memory consolidation and prevent emotional contamination of recollections; (2) **Cognitive interviewing**: Using open-ended questions, encouraging narrative recall, and exploring sensory details can jog memory and enhance the accuracy of recollection; and (3) **Scene revisits and reenactments**: Returning to the scene of the incident and conducting a walk-through can trigger contextual cues and provide additional details that might have been missed initially. In the same manner as those techniques, reviewing BWC recordings can serve to refresh memory, confirm details, and potentially identify missed information.

Chapter 3. Assessment of current scientific research

This chapter summarizes the research to date, drawing on the work of police leaders, criminologists, psychologists, memory researchers, and legal scholars. Broadly speaking, the relevant research on these two areas is extensive, and a full review exceeds the scope of this report. Since this summary of the research is necessarily brief, readers are encouraged to seek out the primary sources referenced here for more detailed coverage of the evidence. Additionally, the research base is growing rapidly. This review summarizes the body of evidence and covers two main lines of inquiry: (1) the degree of accuracy in officer reports following a use-of-force incident; and (2) the degree of accuracy of an officer's memory of a use of force.

Background and Contextual Issues

The Limitations of Body-Worn Cameras

The debate over BWC review of recordings following a critical incident assumes there is accurate and useful information captured on the BWC. While that is often the case, it bears noting that BWCs have limitations. First, the camera must be activated to record the encounter. White and Coldren (2017: 8) note:

Critical incidents involving the police can begin in an instant and are extremely fluid. As a consequence, the officer may activate the camera but not until after their safety, or the safety of a resident, is no longer threatened.

However, it should be noted that agencies can adjust the settings on most BWC models to capture a pre-event buffered recording lasting up to 120-seconds, whereby the camera records preceding camera activation, which mitigates this limitation to some degree.

Second, even if the BWC is activated, it may not fully capture the audio and video of what transpired. If a weapon is drawn, the officer's shooting platform may block the camera's view. The BWC may become dislodged during a struggle or pursuit. The camera faces directly forward usually at chest level and may not capture relevant details in the officer's peripheral vision (e.g., the officer turns their head but not their body). Moreover, some have argued that BWC footage, even if it fully captures the event, does not provide the necessary background and context to fully understand what has occurred during the encounter (Dawes, et al., 2015). As White and Coldren (2017: 9) note, BWCs are not foolproof:

In short, the added advantage of BWCs over dashboard cameras is that the BWC goes where the officer goes; however, this can also be a limitation. There is no film crew on the scene to insure a bird's-eye view with perfect lighting. This is not the show COPS. BWCs have limitations, both human and technological. (White & Coldren, 2017: 9)

There are also limitations to body cameras in terms of their ability to capture the "truth" of a scene: the chest-mounted cameras will also make suspects appear larger and more imposing than they would if the camera was mounted at eye-level. And the shaky nature of the recordings (mounted on a moving officer as opposed to a stationary camera) can add "deceptive intensity."

even where incidents appear with reasonable clarity on video recordings. Research shows that judgments about what can be seen on video can be subject to interpretation, with viewers being primed to sympathize more with the perspective shown on camera (so a viewer would be likely to give more weight to the officer's apparent perspective because the video depicts the officer's vantage point). (Stoughton, 2017).

These limitations of BWC are important when considering the accuracy of the officer's subjective perspective.

Differences Between the BWC Recordings and Officer Memory

One of the primary concerns surrounding BWC review of critical incident recordings is the potential for discrepancies to emerge between the camera recordings and what the officer writes in a report based on memory. Those discrepancies could be interpreted as mistakes, inaccuracies, or even lies that can impeach an officer's character on the witness stand. However, some experts suggest that we should expect differences between the BWC recordings and the officer's recollection captured in a written report for two reasons (Phillips, 2018). People often make inaccurate observations during stressful events, and they misremember such events (Phillips, 2018). Research shows that officers can experience a range of perceptual distortions during a traumatic event, such as an officer-involved shooting (Klinger, 2004). Those distortions (visual, auditory, time slowing down, etc.) can affect an officer's perception or memory of what occurred (e.g., the officer reported firing three shots, but the recordings show the officer fired six shots). There is a large body of research documenting imperfections in eyewitness memory more generally (Pezdek, et al., 2022).

Phillips (2018: 92-93) highlights the problems with perception and memory in high-stress events:

A body of scientific research demonstrates that people are often inaccurate with their observations of an event (Loftus and Hoffman, 1989; Wise, *et al.*, 2007). Further, they may have mistaken recollection of what they saw (Loftus, *et al.*, 1987; Loftus, 1992; Gerrie, *et al.*, 2006; Frenda, *et al.*, 2011). Thus, where a body camera can visually document objective reality, a video recording will not eliminate inaccurate observations and false memories, even if the observer believes them to be true.

Pezdek, et al. (2022: 393) concur, noting:

Although the BWC recording of an event contains true information, it is also likely to include information that the officer may not have attended to or remembered from the original event. After all, the perspective of the officer is not necessarily the same as the perspective of the BWC on the officer's chest. (Stoughton, 2017)

Also, as suggested above, the BWC may fail to capture aspects of the event that are outside the camera's view. Alternatively, the BWC may capture things that the officer did not see or notice. In plain terms, differences between BWC recordings and reports written from an officer's memory should be expected.

The Evidence Base on Visual Aids and Enhanced Memory

There is a large body of evidence within and outside of criminal justice that establishes the effectiveness of visual aids on improving memory (Blaskovits & Bennell, 2020). For decades, police, prosecutors, defense counsel, and other criminal justice officials have used pictures and other visual tools to facilitate memory recall of witnesses, victims, and others involved in the system (Jack, et al., 2015; Salmon, et al., 1995). Visual aids are often used in cognitive interviews (Geiselman, et al., 1985). Blaskovits and Bennell (2020: 253) also note: “There is a growing body of literature outside of the policing context that is finding significant improvements in memory with the use of BWC technology, mainly for autobiographical events” (e.g., SenseCam, a wearable camera; see Hodges, et al., 2011). This literature on visual aids and memory is highlighted to provide a foundation for examining the impact of BWC review—a visual aid—in recalling and reporting on an incident, but it does not inform policy around when an officer should be allowed to view BWC digital evidence in the context of making a formal statement.

The *Graham v. Connor* Reasonableness Standard

In *Graham v. Connor*, 490 U.S. 386 (1989), the U.S. Supreme Court set the legal standard for determining whether a police officer’s use of force is excessive. In the ruling, the Court applied the “reasonableness” principle from the Fourth Amendment, and stated:

The ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Graham v. Connor*, 490 U.S. 386 (1989))

The Court also noted, “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Connor*, 490 U.S. 386 (1989). The ruling had several implications for the review of use of force. First, each use-of-force case must be examined individually based on the specific facts facing the officer at the time they used force. Second, the assessment of reasonableness is determined based on the officer’s perception of those facts and circumstances. The officer’s memory of the event at the time force was used can be critical to the assessment of whether the force was justified or excessive. Pezdek, et al. (2022: 393) note: “If an officer’s event memory and memory for their state of mind at the time of the event are used to determine ‘reasonableness,’ then it is important to ensure that these memories are preserved and not distorted or contaminated.” The implication of this finding is that because officers act on their subjective impressions at the time of the event, the objective reasonableness of the actions is partially dependent on what the officer sensed.

BWC Recordings Review, Report Writing Accuracy, and Memory: What We Know

With the above-referenced contextual issues as a backdrop, we now review the existing scholarship and research in two main areas: (1) the impact of viewing BWC recordings on the accuracy of reports, and (2) the impact of viewing BWC recordings on an officer's memory of the event. It is not our intent to review every single study on the topic. Rather, we review a broad set of rigorous studies that reflect the existing research in terms of research design, data, and key findings.

The Impact of BWC Recordings Review on the Accuracy of Officers' Report Writing

Several studies have specifically tested the effect of viewing BWC recordings on the content and accuracy of officers' reports. The results of those studies are mixed. For example, Dawes, et al. (2015) conducted a small study with 11 officers who wore cameras during use-of-force scenarios. Officers completed a written report and then were given the opportunity to revise their reports after watching the BWC recordings. The authors reported that officers averaged 2.63 minor errors, 5.4 moderate errors, and 0.9 major errors in their reports—all of which were corrected after BWC review. By contrast, Blaskovits, et al. (2020) conducted a similar study with 51 officers, some of whom reviewed BWC recordings before writing a report and some who did not. They reported that BWC review (or not) did not result in significant differences in the accuracy of information reported or number of errors, although officers who reviewed their BWC recordings prior to writing a report did provide more event details than those who had not reviewed recordings.

Research does indicate that watching BWC video is helpful in recall, but the researchers do not specifically address whether the viewing should occur before or after a formal statement. Adams, et al. (2020) conducted an experiment to assess differences in memory and report writing accuracy among student participants who wore BWCs as they observed a simulated crime. Some made an initial statement, and some did not. One week later, participants were asked to recall the event, and half were permitted to watch the BWC recordings. Adams, et al. (2020: 12) reported that, regardless of making an initial statement or not, "reviewing body-worn video enhanced both the completeness and accuracy of statements" and "reviewing footage allowed participants to remove or amend any incorrect details." At the same time, participants permitted to watch the BWC recordings also omitted accurate details not captured by the BWC footage during the recall, though it is unclear whether the omission was intentional or simply an act of forgetfulness.

Similarly, in their experiment with 362 police recruits, Boivin and Gendron (2022) asked study participants to participate in a simulated use-of-force exercise and then write a report on the event. Half of the participants wore cameras, and half of those with BWCs were permitted to review their recordings. The authors reported that "participants wearing a BWC provided more accurate reports than those who did not wear one, and reviewing the footage improved the accuracy of reports by reducing the number of factual errors (Boivin and Gendron, 2022: 760). While these findings suggest officers will write more accurate reports after viewing BWC video, they do not address other important considerations the issue of the review contaminating or

distorting an officer's subjective perceptions or providing an opportunity for collusion or to alter what the officer would have otherwise reported to cover up misconduct.

Vredeveltdt, et al. (2021) enrolled 102 Dutch police officers to participate in a training scenario in which they responded in pairs to an emergency call about physical abuse. One officer wore a camera, the other did not. After the scenario ended, the officers went into separate rooms and wrote a police report. One officer was permitted to watch the BWC recordings first while the other was not. The officers in the "write first" condition were also given the opportunity to revise their original report. The authors reported no significant differences between the "write first" and "watch first" groups in terms of the quantity and accuracy of information reported. In fact, "police officers in the write first condition significantly improved both the amount of detail and accuracy of their reports after footage review" (Vredeveltdt, et al., 2021: 427). The authors conclude officers should be required to write reports before reviewing recordings, because doing so yields the most complete reports while minimizing the downsides of reviewing first. Two recent reviews of research on BWC footage also arrived at the same conclusion of requiring reports beforehand to preserve the original perceptions in greater details (Bennell et al., 2024; Farber, 2024).

Grady, et al. (2016: 247) explores what follows officer-involved shootings through an analysis of procedure that includes viewing BWC recordings and capturing officer accounts. The researchers offer an interesting perspective on the implications of BWC recordings for improving report accuracy: "Even though their report may seem more accurate since it confirms the objective reality of the situation, it is actually less accurate about the officer's perception of the event, which may be far more relevant when it comes to figuring out what led to the use of force." Grady, et al. (2016: 247). The authors are referring to the *Graham v. Connor* standard, which relies on the officer's memory of the event at the time force is used.

The Impact of Viewing Recordings on Officers' Memory

There have been few direct empirical tests of the impact of viewing BWC recordings on an officer's memory. However, there are at least three well-established psychological principles or phenomena that are relevant for the question at issue here: (1) memory fallibility, (2) retrieval-induced forgetting, and (3) cognitive offloading.

First, a large body of research has demonstrated that memory is fallible. Pezdek, et al. (2022: 393) state that "the memory is an imperfect, schema-driven process...[and] that memory can be suggestively influenced by post-event information." Adams, et al. (2020: 14) similarly state "research suggests that an individual's memory for an event can be shaped by subsequent information they encounter." In other words, memory is not only fallible, but also malleable (Phillips, 2017). An individual can create new or even false memories based on exposure to additional information after the event (Loftus, 2005). Grady, et al. (2016) also note research has consistently shown that memory is negatively affected by intense stress and fatigue. Critical incidents are high-stress situations, and review of BWC recordings following a critical incident is a form of post-event information. Pezdek, et al. (2022: 393) conclude:

In light of the research on post-event suggestion, viewing the BWC footage of an event would be expected to suggestively influence officers' memory for the original event, introducing new information not initially observed and altering memory for information that was initially observed.

Blaskovits and Bennell (2020: 255) reviewed the literature on officer recall in general and conjecture on how that research might apply to review of BWC video, acknowledging the potential for subconscious post-event memory alteration and also suggesting that the review of BWC recordings could lead to more deliberate change:

An officer could, theoretically, lie about what they observed during an encounter based on what the footage revealed. An officer could claim, for example, that a gun observed at the scene, which was visible in the BWC footage but not originally encoded by the officer, was the basis for their lethal force decision.

Second, researchers have identified a process called retrieval-induced forgetting (RIF), whereby remembering one part of an event results in other aspects of the event being forgotten (Blaskovitz & Bennell, 2020). In a review of existing literature on officer memory issues in the context of police reporting procedures, Grady, et al. (2016: 247) describe the implications of RIF for BWC review:

If officers view the footage before making the report and use it as “practice” in thinking of what they will report, they may be less likely to recall those other aspects that did not get the extra retrieval that happened by watching what the BWC caught. For example, they may be more accurate in recalling the facial features of the civilian, if they saw the face again on the footage, but may be less likely to recall the details of the car nearby outside the field of view. If they had made their report first, they would likely have better accuracy for the relevant peripheral details of a scene.

In effect, the process of viewing the BWC or other video evidence may actually reduce the officer's ability to recall certain aspects of the event.

The third relevant psychological phenomenon is cognitive offloading, whereby an individual tries to manage (or even limit) the use of cognitive resources by not encoding certain pieces of information (Sparrow, et al., 2011). Blaskovits and Bennell (2022: 257) underscore the potential implications for BWCs: “if officers believe they will be able to access information about an event later via their BWC footage, Sparrow et al.'s study suggests they will be less apt to encode information about the event, which is likely to hinder recall.”

There are large bodies of research behind each of these principles/phenomena,³ but to date, no research has been conducted directly on police BWCs and review of recordings, with one exception. Pezdek, et al. (2022: 393) specifically tested whether “viewing the BWC video of an event alters an officer's event memory and memory for their state of mind during a use-of-force incident.” Sixty-one officers participated in two scenarios presented through an officer-involved

³ Review of the bodies of research on memory malleability, RIF, and cognitive offloading exceeds the scope of this report.

shooting simulator. Officers answered questions about the interactions immediately after the simulation, and then a short time later. Some officers were permitted to watch BWC recordings of one of the scenarios before answering the questions a second time, and a second experiment allowed some officers to review the video multiple times. Pezdek, et al. (2022: 392, 401) found that “[v]iewing BWC video generally increased the accuracy of memory for information about the event and increased the proportion of information in officers’ reports that changed from Time 1 to Time 2, including an increase in both the amount of information initially recalled but later omitted and the amount of new information first recalled at Time 2.” However, they found that viewing the BWC multiple times did not improve memory recall or accuracy.

Summary

This chapter reviewed the body of research that has relevance to the question at hand: should officers be permitted to review BWC recordings of a use of force prior to making a formal statement about the event; never be permitted to view; or be required to provide a perceptual interview and/or submit an initial written report before viewing recordings, followed by an opportunity to view recordings and supplement the report? Several key points that provide an important backdrop to this question were highlighted:

1. There is a long history of using visual aids to improve memory of witnesses, victims, and others in the criminal justice system; these aids have generally been proven effective.
2. Police BWCs have limitations. They do not capture everything that occurs during a police-community member encounter.
3. There can be differences between an officer’s BWC recordings and the officer’s memory of what occurred in a use-of-force encounter with a community member. It is also reasonable to expect that there should be these differences.
4. The U.S. Supreme Court ruling in *Graham v. Connor* established the standard for assessing the appropriateness of an officer’s use of force (i.e., was it justified or excessive?), and that standard is based on the officer’s perception of the facts and circumstances at the time force was used. The ability to view the BWC recordings or other video evidence prior to making a statement could distort the memory of that perception.

The research to date was reviewed as to two issues associated with the BWC viewing and report writing question: the impact of viewing BWC recordings on the accuracy of officers’ written reports, and the impact of viewing BWC recordings on officers’ memory of an event. Though the reviews are presented separately, the issues are very much related. Several studies have concluded that the review of BWC recordings can improve the accuracy and detail of officers’ written reports (Adams, et al., 2020; Blaskovitz, et al., 2020; Boivin & Gendron, 2022; Dawes, et al., 2015; Vredevelt, et al., 2021).

Though there is only one study to date that directly tests the second issue – the impact of BWC review on officer memory – there are well-established psychological phenomena/ principles that inform the dialogue: the fallibility and malleability of memory, retrieval-induced forgetting

(RIF), and cognitive offloading. These factors suggest that officer review of BWC recordings can alter the memory of the event; the results from the only study that has directly examined that question empirically confirm this hypothesis. The authors concluded “viewing the BWC video of a use-of-force incident alters an officer’s event memory and memory for their state of mind during the incident (Pezdek, et al., 2022: 401).” The results of this study are definitive, but it is just one study. More research is needed.

Chapter 4. Analysis of local agency policies and various state statutes

This section will provide an analysis of the BWC policies of state and local agencies that participate in the Bureau of Justice Assistance's BWC Policy and Implementation Program (BWCPIP). The U.S. Department of Justice Bureau of Justice Assistance (BJA) supports the BWCPIP, which funds the CNA Corporation, Arizona State University (ASU), and Justice and Security Strategies, Inc. (JSS) to provide training and technical assistance (TTA) to law enforcement agencies that have received funding for BWCs. In addition, many states address this matter specifically in statute. The recent legislative history from several states will be discussed, including California, Connecticut, Delaware, Florida, Illinois, New Jersey, New York, Pennsylvania, and Texas. Case studies from cities such as Portland, OR and Anchorage, AK will also be described to illustrate how this issue has become a labor dispute at police departments.

Administrative policy review is a central feature of the TTA provided to the BWCPIP sites. As part of this policy review, BJA TTA providers conduct an annual policy analysis. The 6th edition of the policy analysis report describes a review of 447 policies from agencies funded in fiscal years (FY) 2015–2020 (White, et al., 2022). In this report, we focus on two key aspects of BWC review by officers: (1) authority to conduct “routine” reviews when completing reports, preparing for court, etc.; and (2) authority to review BWC recordings after a critical incident (e.g., shooting). The results presented below offer insights into agency policy positions on these issues.

Surveyed Law Enforcement Agencies

The vast majority of BWCPIP-funded agencies allow officers to review their recordings as an aid in completing reports under routine circumstances, preparing for court, etc. This practice has changed little from 2015 to 2020, ranging from 89-99% in a given year (see Figure 1). On the other hand, the percentage of BWCPIP-funded agencies that permit officers to review BWC recordings after a critical incident and before making a statement has trended downward over the same period of time, from 95% in 2015 to 71% in 2020 (see Figure 2).

Figure 1. BJA BWCPPI Agencies Permitting Routine Officer Review of BWC Recordings
(From footnote 6; data source, Bureau of Justice Assistance)

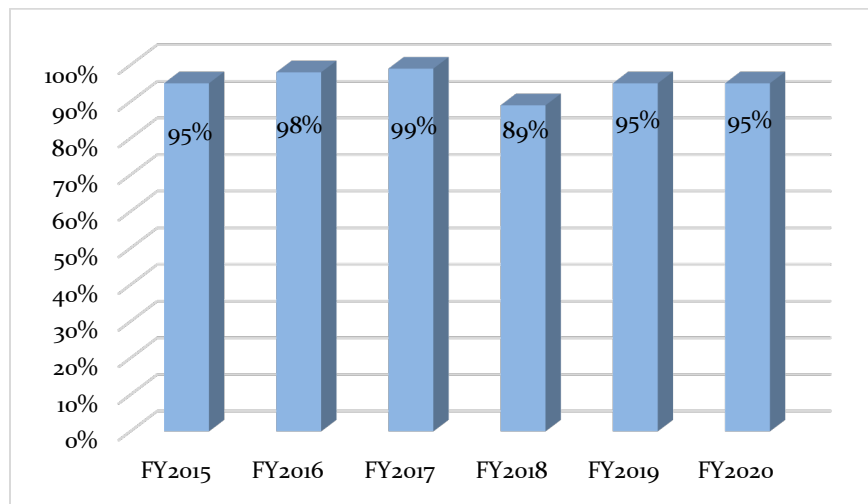
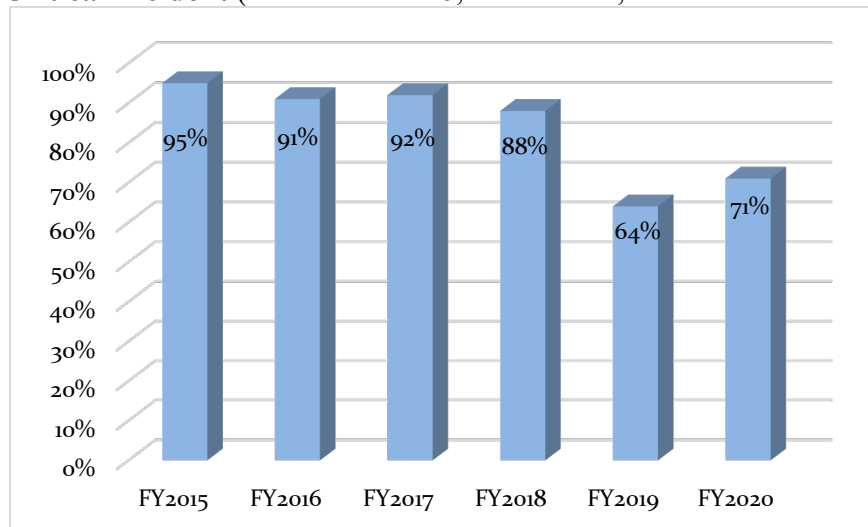


Figure 2. BJA BWCPPI Agencies Permitting Officer Review of BWC Recordings After Critical Incident
(From footnote 6; data source, Bureau of Justice Assistance)



The conclusions drawn from this analysis of BWCPPI grant funded sites suggest that while the majority of policies allow officers to review recordings from BWC prior to writing reports or making statements on critical incidents, the prevalence of this practice has trended downward. Recognizing that the BWCPPI sample is not random and cannot be considered nationally representative, caution should be taken in interpreting this finding. However, observations made while preparing this report and the review of state statutes and labor organization negotiations discussed below lend credence to this trend. Furthermore, PERF found in a 2023 survey of 156 PERF member agencies in the U.S. that the percentage of agencies that allow officers to view BWC recordings prior to making a statement after a critical incident fell to 56% from 92% based on a BJA policy review in 2019 (PERF, 2023: 25). While this is not an apples-to-apples

comparison (because the overlap between agencies that participated in both the 2019 and 2023 is not 100%), it suggests a substantial shift in BWC policy by agencies.

State Legislation, Statutes, and Policies

Many states have addressed this issue in various ways through legislation, statutes, and policies. It is important to recognize that legislation, statutes, and policies related to officers' review of body-worn camera video can vary between states and even between law enforcement agencies within a state. Additionally, these policies can change over time, so the information in this report is limited to the policies in place at the time of the review. A scan of statutes, regulations, legislation, model policies, and other guidance from California, Connecticut, Delaware, Florida, Illinois, New Jersey, New York, Pennsylvania, and Texas reveals that most of these states specifically allow an officer to review video from a critical incident before making a statement while at least two specifically prohibit such viewing:

1. California—Access to view BWC, before making a statement in a critical incident investigation, appears to be a policy decision left to the agency.⁴
2. Connecticut—Specifically allows review of BWC video before making a statement in a critical incident.⁵

⁴ Review of California's BWC laws revealed nothing explicit about officer review of BWC video in critical incidents. The [California Peace Officers Bill of Rights](#) did not address this topic either. The [California Model Policy \(i.e., Body-Worn Cameras: An Aid for Prosecutors\)](#) states explicitly that viewing of critical incident video before making a statement is an agency policy decision. Per footnote 7 on page 6, "There is divergent opinion as to when officers should be allowed to review recordings when there has been an officer-involved shooting or any use of force resulting in serious injury. Some departments prohibit officers from reviewing such footage until after they have given an initial statement. It is recommended that the department have a transparent policy on the viewing of an officer's recording." Private communication with a retired San Diego County Deputy District Attorney confirmed that this issue is not addressed in California legislation.

⁵ Language from Connecticut's Police Officer Standards and Training Council Model Policy on the Use of Body Worn Recording Equipment and Dashboard Cameras (revised 9/14/2022) included the following language: "Law enforcement personnel may review a recording from their body-worn and dashboard recording equipment in order to assist such officer in providing a statement as a witness to events which are the subject of a department internal administrative inquiry, including officer shooting investigations"; "A police officer may review a recording from their body-worn and/or dashboard recording equipment in order to assist such officer with the preparation of a report or otherwise in the performance of their duties"; and "If a police officer is giving a formal statement about the use of force or if a police officer is the subject of a disciplinary investigation in which a recording from body-worn recording equipment or a dashboard camera with a remote recorder, is being considered as part of a review of an incident, the officer shall (1) have the right to review such recording in the presence of the officer's attorney or labor representative, and (2) have the right to review recordings from other body-worn recording equipment capturing the officer's image or voice during the incident. Not later than forty-eight hours following an officer's review of a recording under subdivision (1) of this subsection, or if the officer does not review the recording, not later than ninety-six hours following the recorded incident, whichever is earlier, such recording shall be disclosed, upon request, to the public, subject to the provisions of C.G.S. 29-6d subsection (g)" [Connecticut HB 7103 \(2015\)](#) specifically says, "If a police officer is giving a formal statement about the use of force or for a disciplinary investigation, the officer has the right to review any relevant recording in the presence of the officer's attorney or labor representative." [Connecticut Senate Bill 380 \(2019\)](#), a.k.a. Public Act No. 19-90 Police Accountability and Transparency Act, says among other things that video from body-worn and cruiser cameras will be available to the public as quickly as 48 hours after it is reviewed by the officer, or 96 hours after the incident if the officer does not

3. Delaware—The Delaware Model Policy allows an agency to decide in its policy whether an officer can review BWC video, except where video review is specifically allowed under the Delaware Law Enforcement Officers' Bill of Rights (DELEOBR). The DELEOBR requires access, upon request, to any exculpatory evidence, including videos, if one is charged with violating law or policy.⁶
4. Florida—Specifically allows review of BWC video before making a statement in a critical incident.⁷
5. Illinois—Initially allowed under its 2015 BWC law but reversed that and now prohibits review before making a statement in a critical incident under its 2021 revision to the BWC law.⁸

view it. [Connecticut Senate Bill 1083 \(2021\)](#), a.k.a. Public Act No. 21-33, reinforces both points—Effective October 1, 2021, Officers have the right to view BWC video, with their attorney or labor representative: 1. Before video, where they are present, is released under a public disclosure request, or 2. If a police officer is giving a formal statement about the use of force or is the subject of a disciplinary investigation where BWC will be used as part of the investigation.

⁶ The [Delaware Model BWC Policy](#) states: 9. If an officer is suspected of wrongdoing or involved in an officer-involved shooting or other serious use of force, the issuing agency reserves the right to limit or restrict an officer from viewing the video file. However, this does not overrule the officer's rights under [Delaware Law Enforcement Officers Bill of Rights \(DELEOBR\)](#) or [Title 11, Chapter 92 of the Delaware Code](#) (i.e., [Senate Bill 96 \(1985\)](#); [65 Del. Laws, c. 12](#)) which states: (c) Whenever a law-enforcement officer is under investigation or is subjected to questioning for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or questioning shall be conducted under the following conditions: ... (10) An officer who is charged with violating any departmental rules or regulations, or the officer's representative, will be provided access to transcripts, records, written statements, written reports, analyses and video tapes pertinent to the case if they are exculpatory, intended to support any disciplinary action or are to be introduced in the departmental hearing on the charges involved. Upon demand by the officer or counsel, they shall be produced within 48 hours of the written notification of the charges.

⁷ Florida is an Officer's Bill of Rights state. A state statute enacted requires any local law enforcement agency that deploys BWC to have a policy that contains: "A provision permitting a law enforcement officer using a body camera to review the recorded footage from the body camera, upon their own initiative or request, before writing a report or providing a statement regarding any event [emphasis added] arising within the scope of their official duties. Any such provision may not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses." [Florida House Bill 305 \(2017\)](#), a.k.a. Chapter 2017-15, requires local agencies to permit officers to review the recorded footage from their body-worn camera at their request before writing a report or giving a statement regarding any event arising within the scope of their official duties.

⁸ [Illinois SB 1304 \(2015\)](#) states that the officer who recorded data and their supervisor can access and review recordings prior to completing incident reports so long as their review is documented. [Illinois House Bill 3443 \(2021\)](#), a.k.a. Public Act 102-0028, provides that a law enforcement officer shall not have access to or review their body-worn camera recordings, the body-worn camera recordings of another officer, or any other recordings prior to completing incident reports or other documentation under specified circumstances. Relevant language from Illinois Law Enforcement Officer-Worn Body Camera Act (50 ILCS 706) includes the following: Except as otherwise provided in this Section, the recording officer and their supervisor may access and review recordings prior to completing incident reports or other documentation, provided that the supervisor discloses that fact in the report or documentation. (i) A law enforcement officer shall not have access to or review their body-worn camera recordings or the body-worn camera recordings of another officer prior to completing incident reports or other documentation when the officer: (a) has been involved in or is a witness to an officer-involved shooting, use of deadly force incident, or use of force incidents resulting in great bodily harm; (b) is ordered to write a report in response to or during the investigation of a misconduct complaint against the officer.

6. New Jersey—Specifically allows officers to review BWC video before writing a report or making a statement, except for critical incidents.⁹
7. New York—No specific legislation about access to BWC in a critical incident. However, based on the statewide model policy, it appears that agencies generally allow access to view BWC before making a statement in a critical incident investigation.¹⁰
8. Pennsylvania—Access to view BWC, before making a statement in a critical incident investigation appears to be a policy decision left to the agency.¹¹

⁹ [New Jersey Assembly Bill 5864 \(2021\)](#) allows law enforcement officers to review body worn camera recordings prior to creating initial report, with exceptions for critical incidents. [Attorney General Law Enforcement Directive 2022-1](#) updates the statewide Body Worn Camera Policy (“BWC Policy”) to conform to P.L.2021, c.472, which was signed into law on January 18, 2022 by Governor Philip D. Murphy and outlines the circumstances in which a law enforcement officer may view relevant BWC footage prior to writing an initial report, providing a statement, or submitting to an interview about the recorded event.

¹⁰ 1. Review of New York’s enacted BWC laws revealed one law that addressed policy issues: [Assembly Bill 8674 \(2020\)](#). The bill mandates BWC for New York State Police Officers and created the Law Enforcement Misconduct Investigative Office to investigate police misconduct and review, study, audit and make recommendations to police agencies to help increase public safety and protect civil liberties and civil rights. There does not appear to be anything explicit in this law about officer review of BWC video in critical incidents. 2. New York State does not have a Law Enforcement Officer Bill of Rights (LEOBR). 3. The [New York State Model Policy, from the NYS Department of Criminal Justice Services](#), implies that viewing of critical incident video before making a statement is the default for the state. Pages 6-7 of the model policy states: VII Access; A. Permitted review of footage; 1. Officers will be permitted to review only video footage of an incident in which they were involved for purposes of: a. Conducting a criminal investigation; b. Preparing for courtroom testimony or courtroom presentation; c. Providing testimony pursuant to an administrative inquiry; d. Assisting the officer in professional development. 2. In addition to the permitted access listed in Section 1, supervisors may also review recordings as it pertains to: a. Investigating alleged misconduct reports or meritorious conduct; b. Whenever such recordings would be beneficial in reviewing an officer’s performance; and c. Recordings that are of value as training tools; 3. Prosecutors will be permitted to review video footage as it pertains to their investigations. 4. In reviewing individual agency policies: The two largest agencies in the State, the [New York Police Department](#) and the [New York State Police](#), contain explicit language in their BWC policy allowing officers to review BWC footage before making a statement for a critical incident. The [Rochester Police Department’s policy](#) uses the language directly from the state model policy. The [Albany Police Department’s policy](#) generally allows such review, unless directed not to by a supervisor, which implies review is not mandated under law. Per page 6 of the policy: IV. AUDIO/VIDEO DATA; A. Prior to BWC footage being uploaded to the BWC server, the officer may review the footage on Axon View or Evidence.com for the purpose of completing any reports associated with the call, unless directed not to by a supervisor. 1. Personnel are only allowed to review the footage captured on their assigned BWC, unless prior authorization is obtained from their immediate supervisor.

¹¹ 1. Review of Pennsylvania’s enacted BWC laws revealed one law that addressed policy issues - [Act 22 \(2017\) AKA SB560 \(2017\)](#), and others that pertain only to funding. We found nothing explicit in this law about officer review of BWC video in critical incidents. 2. Pennsylvania does not have a Law Enforcement Officer Bill of Rights (LEOBR). 3. The [Pennsylvania Model Policy from the Pennsylvania Commission on Crime and Delinquency](#) implies that viewing of critical incident video before making a statement is an agency policy decision. The model policy lists conditions that agencies may adopt for officer review of video, one of which is investigations, report writing and preparations of other official documents. Per page 4 of 6 of the model policy: F. REVIEW OF RECORDINGS: It is the recommendation of the Commission that: ...2. Policies shall include in what situations, if any, an officer is authorized to view a BWC recording. Reasons to view and use recordings may include, but not be limited to: a) Investigation, report writing or preparation of other official documents; b) Court preparation; c) Review of prosecution evidence; d) Crime scenes; e) Training; and f) Policy compliance.

9. Texas—Specifically allows review of BWC video before making a statement in a critical incident.¹²

Local/Agency-Specific Policy

At the local level, the issue of when officers can review BWC recordings has gained media attention for a number of law enforcement agencies. It has been a notable policy question at both the Portland Police Bureau (PPB) in Oregon and the Anchorage Police Department in Alaska, which are highlighted as examples here to illustrate the challenging nature of this policy matter. In Portland, the city and the police union agreed to a BWC pilot program but have not fully resolved the issue to date. PPB was the subject of a settlement agreement with the U.S. Department of Justice, which—as amended—requires the city to implement BWCs.¹³ The city piloted its BWC program under a policy that requires officers involved in higher level uses of force to provide a perceptual statement to Internal Affairs investigators before viewing their BWC’s recording of the incident.¹⁴ After this review, Internal Affairs investigators will continue the officer’s interview, including the opportunity to clarify any discrepancies between the involved officer’s perceptions and their BWC recordings.¹⁵

In Anchorage, the city and police department reached a compromise on a portion of the policy that requires officers to provide a report prior to viewing BWC recordings in certain circumstances.¹⁶ This will allow the department to implement their BWC program which was delayed until the policy matter was resolved.¹⁷

¹² [Texas Senate Bill 158 \(2015\)](#) states that among many other police requirements, the law allows an officer to view BWC footage before making a statement. [Texas AG opinion KP-0185](#) states that if a Texas police officer outfitted with a body camera shoots someone, they get to review not only their own footage but that of every other body camera-wearing officer at the scene before answering questions about it.

¹³ *United States v. Portland*, Case No. 3:12-cv-02265-SI, Dkt. 354-1, ¶ 194 (Feb. 28, 2023).

¹⁴ *United States v. Portland*, Case No. 3:12-cv-02265-SI, Dkt. 368-1, ¶ 11.2.2.2 (Aug. 8, 2023).

¹⁵ *Id.*

¹⁶ Anchorage Police Department’s BWC policy, available at, [PI 3.10.110 Body Worn Cameras - Anchorage Police Department - PowerDMS](#), states: 2. Officers may review or copy recordings, except in the following circumstances:

a. When there is an in-custody death, use of deadly force, or other critical incident; or b. When an employee is the subject of a criminal investigation in which the officer is suspected of a crime. c. Prior to the officer providing a statement or documenting the force actions in a police report where hard empty hand and/or intermediate weapons were used or where the subject has an injury or a complaint of an injury that requires medical treatment.

See also [PI 3.05.020 - Reporting and Investigating Force - Anchorage Police Department](#), which states:

Note: If the officer is wearing a body worn camera (BWC) or the use of force was captured on their in-car video, they will complete the use of force narrative prior to watching their video. The Officer must articulate, in specific detail, the facts and circumstances surrounding the force used. The officer may then watch their video footage and add additional information to the use of force narrative.

¹⁷ Tess Williams, “Anchorage police and union reach agreement on policy for long-delayed body cameras,” Anchorage Daily News, May 24, 2023, <https://www.adn.com/alaska-news/crime-courts/2023/05/24/anchorage-police-and-union-reach-agreement-on-policy-for-long-delayed-body-cameras/>: “Anchorage Police Department officials said...that they have reached a resolution with the union over body camera policy disagreements that have contributed to delays in equipping officers...The police department has faced mounting backlash from advocates and the public over the repeated delays. Officials have not provided a timeline for when the body cameras will be implemented. Anchorage voters approved funding body cameras and technology upgrades for the police department more than two years ago through a \$1.8 million annual tax increase...Early drafts of the policy...stalled due to concerns ...on how the technology could conflict with privacy laws...The department then entered into negotiations

Chapter 5. Stakeholder listening sessions

To complement the research literature and policy review described in Chapters 2-4, the National Institute of Justice (NIJ) and the Bureau of Justice Assistance (BJA) hosted three virtual listening sessions to gather stakeholder perspectives on the question of officer review of BWC recordings following involvement in a critical incident. The listening sessions took place in May 2023 and included criminal justice and criminology scholars with expertise in body-worn cameras and law enforcement use of force; law enforcement and prosecutorial executives; and psychologists, legal scholars, and civil rights advocacy groups. Participants were invited based on their experiences and expertise on the topic of body-worn camera technology and program implementation.

The goal for each of the three sessions was to discuss the advantages and disadvantages of officer review of BWC recordings prior to the completion of initial reports or interviews concerning an incident involving use of force. During these listening sessions, stakeholders were prompted to offer opinions, experiences, perspectives, and arguments for and against allowing an officer to review BWC recordings following involvement in a critical incident and on Executive Order 14074. They provided suggestions and recommendations on a path forward. The views expressed by the participants reported here are their own and do not represent the views of the U.S. Department of Justice, nor should they be taken as DOJ policy recommendations.

The virtual listening sessions were facilitated by Dr. Michael D. White.¹⁸ The sessions were not recorded to promote open and uninhibited commentary. Three notetakers participated. Throughout the 60-minute sessions, participants: (1) discussed arguments in favor of and against officers viewing BWC recordings of critical incidents before making formal statements, (2) provided examples of when pre-reporting viewing was beneficial and when the prohibiting of pre-report viewing was beneficial, and (3) expressed thoughts on a “middle ground” or compromise strategy that delivers on the benefits for and against the practice of officers viewing BWC recordings before writing reports. Participants cited research, both their own and those of third parties, in supporting their arguments.

The notes from the virtual listening sessions were reviewed and coded using deductive and inductive coding approaches to identify predominant themes. The summaries below list the participants and the key takeaways from each listening session, including supporting context or examples provided from participants.

Listening Session 1: Criminal justice and criminology scholars

The information presented in this section centers on the perspectives of criminal justice scholars with expertise in body-worn cameras and law enforcement use of force. The discussion focused

over the policy with the union that represents the officers...They intended to enter into arbitration this spring... That arbitration was postponed...They reached a compromise on a portion of the policy that will allow officers to provide a statement or report prior to viewing body camera footage of situations where force was used.”

¹⁸ Dr. Michael D. White is a professor in the School of Criminology and Criminal Justice at Arizona State University and is associate director of ASU’s Center for Violence Prevention and Community Safety. Dr. White is co-director of training and technical assistance for the U.S. Department of Justice Body-Worn Camera Policy and Implementation Program

on arguments for and against officers reviewing BWC recordings following a critical incident and prior to the completion of initial reports or interviews.

Participants

- Ian Adams, Assistant Professor in the Department of Criminology & Criminal Justice, University of South Carolina
- Geoff Alpert, Assistant Professor in the Department of Criminology & Criminal Justice, University of South Carolina
- Gabrielle Isaza, Senior Research Associate, National Police Institute
- Michael Smith, Professor, Texas University San Antonio

Takeaway 1: Law enforcement officers respond to some of the most traumatic and violent encounters of any profession that can result in extreme levels of stress. The impact such stress has on their memory and recall of critical events must be taken into account in the “watch first”/“report first” argument.

Events that transpire under extreme stress with severe time constraints can severely distort one’s perception and memory of what happened. Several participants reiterated much of the psychology research reported in Chapter 3, specifically citing that people who are exposed to traumatic events can experience perceptual distortions (visual, auditory, etc.). One participant noted differences between BWC recordings and officer memory should be expected due to perceptual distortion and the effects critical stress can have on memory and recall. Further noting the work of Phillips (2018), Pezdek et al. (2022), and Wise et al. (2007), participants noted a body of research supporting that critical stress can affect memory, causing inaccurate descriptions of events resulting in false memories. Even if BWC recordings are reviewed, that may not eliminate false memories caused by extreme levels of stress following a critical incident. Alternatively, one might even create new or false memories based on exposure to additional information after the event (Loftus, 2005).

*Takeaway 2: *Graham v. Connor* (1989) focuses on the value of an officer’s perception. Participants noted that the variance in the interpretation of *Graham v. Connor* on whether one is seeking more information or the truest perception must be considered in the conversation.*

Several participants noted that while BWC recordings can show the objective reality of an event, at least from the camera’s vantage point, it must be acknowledged that BWC recordings do *not* capture an officer’s perception of what took place during that event. Participants observed that a BWC’s restricted view may not include the complete context or provide a full view of officers’ surroundings that affect officers’ perceptions. Referencing the psychology research and the work of Loftus (2005), participants noted that viewing BWC recordings could alter an officer’s memory of their own perceptions of an event, distorting an officer’s “true” or actual perception. One participant stated the strongest argument for *Graham v. Connor* supporting “report first” is the perception piece. If the desire is for the most accurate recall of an officer’s perceptions at the time of the critical incident, then getting the statement before an officer views BWC recordings is best; however, one must take into the account the research on how stress compromises memory regardless of the use of recall tools such as BWC recordings.

Takeaway 3: A guided interview or narrative watching with supplement report could be a middle ground to the “watch first” versus “report first” argument. Participants shared this option as way to preserve the value of getting officers’ unvarnished memory while also recognizing the research on the relationship between exposure to stress and poor memory recall.

Several participants commented that a middle ground could allow officers to make a report first and then view BWC recordings while narrating their thoughts and experiences during an event to get an in-depth account of an officer’s perception. Having officers make initial reports then undergo a guided interview while reviewing recordings would allow officers to remove or amend any incorrect details and provide context or explanations for inaccuracies. Participants noted that such an option is a part of the Department of Justice’s Civil Rights Division’s ongoing consent decree with the Portland Police Bureau. Others opined that because of the lack of public trust in policing one may not get much of a useful statement from an officer if they are not allowed to watch the BWC video prior to making statements. They also reported that if officers fear that their statement might not align with the BWC video and thus appear to be false, they may intentionally leave out specific details in an effort to minimize potential conflicts. The session closed with one final comment noting the work of Adams, et al. (2020), which found that regardless of making an initial statement, viewing BWC recordings improves completeness and accuracy of reports.

Listening Session 2: Law enforcement and prosecutorial executives

The information presented in this section centers on the perspectives of current and former law enforcement and prosecutorial practitioners from across the nation. The information presented in this section focuses on their feedback related to Executive Order 14074 and focused on the issue of whether law enforcement officers should be permitted to review BWC recordings prior to completing formal reports regarding a critical incident. Participants were probed throughout the discussions to address arguments on all sides of the issue at hand. Below is a summary of the key takeaways from the listening session.

Participants

- Christian Quinn, Major (ret.), Fairfax County Police Department, VA
- Arif Alikhan, Former Director of Constitutional Policing and Policy, Los Angeles Police Department
- Damon Mosler, Deputy District Attorney (ret.), San Diego County District Attorney’s Office, CA
- Jason Lustig, Assistant Head Deputy District Attorney, Los Angeles County District Attorney’s Office, CA
- Maris Herold, Chief of Police (ret.) Boulder, CO and Cincinnati, OH

Takeaway 1: The benefits of BWCs to provide transparent and accurate information of critical incident cannot be fully realized if officers do not embrace the technology and trust that recordings will not be used unfairly against them.

Participants noted that although BWCs are one tool agencies use to demonstrate efforts at transparency and accountability for officer actions, officers themselves will not trust BWCs if they are not allowed to view recordings after exposure to traumatic events prior to the public viewing it and potentially facing further public scrutiny. One unintended consequence of not allowing officers to review recordings is officers not trusting the process and ultimately, in extreme cases, not activating BWCs during critical events.

Takeaway 2: A controlled or structured environment for officers to review recordings prior to making formal statements is one way to maintain integrity of the process.

Many participants asserted that controlled circumstances that allow officers to review BWC through guided interviews, whether before or after reviewing the video, are best. One participant noted the Los Angeles Police Department has taken a similar approach in which immediately following a critical incident, officers are separated and monitored while investigators reviewed recordings and then officers are able to review only their own video with their attorney and investigators. Many believed that such an approach might provide a balanced middle ground.

Takeaway 3: The psychological research on “clean memory” and emotional trauma following a critical incident are important components to understand in the “watch first”/ “report first” argument.

One participant noted that their former agency did not allow officers to review BWC videos prior to making formal statements in order to get the most accurate account of what happened. However, based on the recommendation of the participant’s agency psychologist, such formal statements were not completed until after the officer had experienced two full sleep cycles. The participant suggested sufficient REM sleep is important in memory retrieval.¹⁹ Many participants noted they have witnessed trauma, such as an officer-involved shooting, result in perceptual distortion and memory gaps. One participant shared their firsthand experience with memory distortion after being involved in a critical incident.

Takeaway 4: There can be negative impacts of reviewing BWC recordings prior to making formal statements. Watching BWC recordings can alter memory and lead to inaccurate recall, resulting in unintentionally biased reports of critical incidents.

Similar to the perspectives expressed in Listening Session 1, participants noted that viewing BWC recordings before making a statement has the potential to change an officer’s recollection of what occurred during a critical incident. Many agreed that watching the recordings prior to making statements could negatively affect the integrity of the investigation, as an officer’s “true” thought process and perceptions at the time of the incident may be compromised. Participants were also careful to note that not all cases of officers viewing recordings prior to writing reports

¹⁹ Following an investigation of the Portland Police Bureau (PPB), the U.S. Department of Justice criticized the agency for delaying interviews of officers involved in shootings or in-custody deaths for 48 hours, rather than interviewing them at the scene. DOJ found that this waiting period defeated the purposes of contemporary, accurate data collection through use of force reports. See U.S. Department of Justice, Investigation of the Portland Police Bureau, September 12, 2012 at 31, *available at* https://www.justice.gov/sites/default/files/crt/legacy/2012/09/17/ppb_findings_9-12-12.pdf.

will involve unintentional bias. One participant recalled watching an officer craft a narrative based on what BWC recordings showed, but it was later uncovered that the officer tailored his recall of the event to match the video.

*Takeaway 5: Application of the *Graham v. Connor* standard can remain intact if officers are permitted to review BWC recordings prior to making formal statements.*

Some of the participants expressed that the legal standard set forth in *Graham v. Connor* is based on the officer's perceptions of the circumstances at the time when force is used. Specifically, some participants believed that when the goal is to document the truth of a critical incident: allowing officers to view the video can aid their recollection of those perceptions. Further, some noted that allowing officers to review recordings prior to making statements with the guidance of skilled police counsel can help them articulate their emotions and thoughts throughout an incident.

Takeaway 6: Stakeholders should consider moving away from the rigidity of the "either/or" debate of whether to permit the viewing BWC video before versus after a statement, including consideration of a compromise policy.

When prompted to think of a middle ground between allowing officers to view BWC video before versus after making a formal statement, the majority of participants expressed that this presents an unnecessarily rigid dichotomy. Instead, they suggested that better documentation procedures, quality investigations, and skilled interviews are the real issues at hand. There is a great amount of variance among these factors following a critical incident, which is concerning and should be addressed to ensure the trust of officers in both BWCs and the video they produce, as well as to restore public trust in policing.

Listening Session 3: Psychologists, legal scholars, and civil rights advocacy groups

Listening Session 3 focused on gathering perspectives from psychologists, legal scholars, and civil rights advocacy groups with expertise in policy, laws, and implementation of body-worn cameras. Non-law enforcement stakeholders are often well informed about the policies of enforcement agencies and can provide unique insight into how these policies may drive outcomes based on their direct experiences interacting with officers, agencies, and community members.

Participants

- Kathy Pezdek, Professor of Cognitive Science, Claremont Graduate University
- Elizabeth Loftus, Professor, University of California Irvine
- Nellie King, President, National Association of Criminal Defense Lawyers
- Seth Stoughton, Professor, University of South Carolina
- Jay Stanley, Senior Policy Analyst, American Civil Liberties Union

Takeaway 1: Equity is a key driver to consider in the arguments for and against officer being able to review BWC recordings prior to make formal statements.

Some participants argued that there should be consistency in how incidents are investigated to ensure that no differences or biases exist in how police investigate themselves versus others. For example, as one participant noted, criminal defendants are subject to adversarial process when under investigation. Officers may feel that they should not be subject to adversarial proceedings; however, if officers are not subject to the same process as other parts of investigations, it could undermine public trust. To clarify this point, the following example was provided: *If a convenience store owner shot an individual during an attempted armed robbery, an investigator would not allow the owner to review the security recordings before giving a statement. Allowing officers to do so introduces a distinction that can't be justified as a matter of impartial public policy.*

Takeaway 2: *Allowing officers to view BWC recordings prior to making statements can promote accuracy and is similar to other investigative practices.*

One participant noted that to accurately capture an officer's perceptions after a critical incident, a scene walkthrough can be conducted. Scene walkthroughs are used to capture forensic evidence; however, one participant noted that memory can be considered evidence. Viewing BWC recordings can be seen as similar to scene walkthroughs.

Takeaway 3: *A middle ground approach could allow officers to make amendments to initial reports after being permitted to watch BWC recordings.*

Several participants proposed officers should make formal statements right after incidents and then be permitted to make amendments to initial statements after viewing BWC recordings. However, those amended statements should identify what new information is reported and clearly document corrections and reasons for those corrections.

Takeaway 4: *Prosecutors, juries, and other stakeholders should be educated on the malleability of memory if officer incident reports are used in court or made public.*

Participants noted that the psychological research on critical stress, clean memory, false memory, and trauma is not always evident or transparent to the public. This might cause misunderstanding of why there are discrepancies between what an officer reports immediately after an incident and what is reported sometime after. One participant expressed concern that viewing recordings could result in false narratives and the creation of fabricated statements tailored to what is shown on videos. Related to this comment, participants noted the idea of retrieval-induced forgetting. In some cases, when individuals are reminded of certain things, it will strengthen their memory on that specific thing but may weaken other parts of memory. In this case, if officers are shown specific parts of the recordings, peripheral details or things not captured on video that could be crucial could be weakened or distorted.

Chapter 6. Conclusion

Should officers be permitted to review BWC recordings of a use of force before making a formal report? In terms of what is happening nationwide, it appears that most states leave it to the agency to determine policy on this topic. A majority of polled agencies allow review of BWC video prior to formal statements, although that percentage has been dropping over the past several years as evidenced by information from the BJA BWCPIP and recent PERF research.

For use of force, including critical incidents:

1. Many civil rights organizations have advocated for law enforcement agencies to take a statement before allowing video review by officers.
2. Police unions have advocated for allowing review by officers before making a statement.
3. The number of agencies that allow officers to review video only after giving an initial statement, which they can then update after viewing the video, is growing.

The research reviewed here should inform an agency's decision-making process on this important question, but it should not be the only factor. The decision on BWC review and report writing should also be informed by a collaborative dialogue with all the relevant stakeholders inside the law enforcement organization. External stakeholders should also have a voice, including the community, the prosecutor, advocacy groups, and partner law enforcement agencies who may lead investigations of officer-involved shootings. The decision on this important question should not be made in a vacuum.

Some law enforcement agencies have devised a compromise solution that requires an officer to write an initial report, which captures the officer's perceptions of the use-of-force event (i.e., consistent with the *Graham v. Connor* standard). The officer is then permitted to review the BWC recordings and submit a supplemental or amended report—which is added to the initial statement. For example, such a policy was negotiated by the City of Portland and the police union and incorporated into an ongoing consent decree involving the Portland Police Bureau and the Department of Justice's Civil Rights Division.²⁰

In sum, available research does not support a complete bar on officers reviewing BWC footage at any point following a use of force incident. Rather, scholarly material and stakeholders identified the two following **Best Practices**:

1. Officers participate in a perceptual interview and/or submit an initial written report before viewing their own recordings, followed by an opportunity to view recordings and supplement the report (noting where additions/changes were made); or
2. Officers are always permitted to review BWC recordings and other video evidence before being interviewed or writing a report.

Offsetting advantages and disadvantages of officer review of BWC footage prior to initial reports or interviews concerning an incident involving use of force are set forth in detail above.

²⁰ "Body Worn Camera Project," Portland Police Bureau website, accessed May 9, 2024, <https://www.portland.gov/police/community/body-worn-camera-project>.

Currently, the available research and those with equities in this space do not uniformly favor a single approach.

Accordingly, agencies should consider the competing factors set forth in this report when determining which best practice to adopt, namely whether officers should participate in a perceptual interview and/or submit an initial written report, followed by an opportunity to view BWC recordings and supplement the report, or whether officers are always permitted to review BWC recordings and other video evidence before being interviewed or writing a report. With either of these best practices, it is imperative that agencies adopt a clear and carefully considered policy that takes into account stakeholder input.

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